

9-117.000

**DEPARTMENT OF JUSTICE
ASSETS FORFEITURE FUND**

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9-117.100 Transfer of Funds From the Seized Asset Deposit Fund to the Assets Forfeiture Fund

The United States Attorney's Office securing a forfeiture is responsible for initiating transfers from the Seized Asset Deposit Fund to the Assets Forfeiture Fund and should provide prompt notification to the United States Marshals Service (USMS) of the events which should lead to a transfer from the Seized Asset Deposit Fund.

In the case of either a consent judgment or a default judgment, the USMS will immediately transfer the forfeited cash to the Assets Forfeiture Fund, unless the United States Attorney determines that execution of the judgment should be delayed.

In the case of a judgment after trial or upon summary judgment, there is an automatic stay of execution of the judgment of 10 working days. If the United States Attorney's Office indicates that no motions or requests for additional stays have been filed, then the forfeited cash will be transferred to the Assets Forfeiture Fund on the eleventh working day following a summary judgment or a judgment after trial.

9-117.200 Payment of Costs and Attorneys' Fees From the Assets Forfeiture Fund -- Limited Authority

Notwithstanding the legal availability of the Assets Forfeiture Fund for EAJA awards, *see* the Criminal Resource Manual at 2273, the Department limits by policy the cases in which Fund monies may be used for such awards. The Congress enacted the EAJA for specific public policy reasons. It would be inappropriate for the Fund to be used in a manner that completely ignored or negated the public policy basis for the EAJA. In an attempt to balance the competing interests involved, the following three tier policy is established:

- The Assets Forfeiture Fund will fund the EAJA award in any case in which the actions of the Federal participants were clearly consistent with current law and Department policy. This includes those cases in which:

- The Asset Forfeiture and Money Laundering Section (AFMLS), Criminal Division, is involved in planning a specific case or program initiative and the participating agency was executing the planned initiative in good faith;
- The Federal participants were executing their responsibilities in consonance with current law and Department policy but the court creates a novel reason or basis for overturning a case that could not be anticipated;
- Similar "no fault" cases. Once approved, the EAJA awards in these cases will be paid by the Fund against the case related expenses category;
- The Assets Forfeiture Fund allocations of the federal participant will be available to fund awards where the agency personnel were acting in good faith but it is not clear that their actions were consistent with existing law and Department policy. Once approved, the funds are to be taken from the case related expenses category. If there are insufficient funds available to cover the award, then the shortfall may be made up by funds available for other categories of expense. A request for reallocation will be approved for this purpose. Total allocations will not be increased to make up for the payment of the award; and
- In any case in which the court finds bad faith or an intentional disregard for existing law or Department policy by the federal participants, the Assets Forfeiture Fund will not be available, either directly or indirectly, to fund the EAJA award.

9-117.210 Payment of Costs and Attorneys' Fees From the Assets Forfeiture Fund -- Procedure

No EAJA award may be charged against the Assets Forfeiture Fund or the Federal participant's Fund allocations without the express written approval of the Asset Forfeiture and Money Laundering Section (AFMLS). Requests for approval to charge an EAJA award against the Fund or against Fund allocations must be submitted to AFMLS in writing. *See* the Criminal Resource Manual at 2274.

If the government has contested the case and incurred an adverse judgment, a copy of the court order should be provided to all involved agencies immediately to permit their participation in preparation of the request package. The request should be forwarded by the United States Attorney's Office to AFMLS by express mail within 5 business days of the court order. The request should include, as appropriate:

- a copy of the court order indicating that the award is being made under 28 U.S.C. § 2412(d) or that the government's position was not substantially justified;
- a copy of the seizure warrant and associated affidavit or a copy of the probable cause statement supporting the seizure, if the seizure was cited as a basis for the award;
- a copy of any pleadings or answers or a description of any litigative position that was cited as a basis for the award;
- a description of any governmental action not referenced above that was cited as a basis for the award; a description of any extenuating factors affecting the seizing agency and the United States Attorney's Office that should be considered;
- a list of the agencies involved in the case; and
- a joint proposal for allocation of responsibility for the EAJA award among the involved agencies.

If the United States Attorney's Office is proposing to settle an EAJA claim, the materials cited in items (2) through (7) above should be provided to AFMLS *in advance* of agreeing to any settlement. This policy is in addition to any other policies governing settlements.

Proposed court orders drafted by the government should be silent as to the source of funds for paying any award. The identification of appropriate sources of funding to pay court judgments is an Executive Branch function and may vary from case to case depending on the facts of the particular case. *See also* the Criminal Resource Manual at 2275 and 2276.

9-117.300 Disposition of ADP Equipment Purchased with Assets Forfeiture Fund Allocations

ADP equipment purchased with Assets Forfeiture Fund monies shall retain any statutory conditions or limitations on its use until:

- The equipment fails or suffers serious performance degradation and it is economically impractical to invest in equipment repair; or
- The equipment is rendered functionally obsolete for forfeiture program purposes of the using office, *and*
- No other agency participating in the Assets Forfeiture Fund within a reasonable radius can use the equipment for forfeiture program purposes, *and*
- The Asset Forfeiture and Money Laundering Section is provided 30 days written notice of the intent to redirect the equipment out of the asset forfeiture program with a brief explanation of the attendant circumstances.